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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MERYL POMPONIO,

Plaintiff,

v.

BEVERAGES & MORE, INC., as an entity and
doing business as "Bevmo!", **JASON ZHONG**
WONG, as an individual and doing business as
"China Palace", **JUDY LI CHAN WONG**, as an
individual and doing business as "China Palace",
ADLAN, LLC, and Does 1-50, Inclusive,

Defendants.

Case No.:

**COMPLAINT BY MERYL POMPONIO
AGAINST BEVERAGES & MORE, INC., *et al.*,
FOR DAMAGES AND INJUNCTIVE RELIEF
RESULTING FROM VIOLATIONS OF 1)
TITLE III OF THE AMERICANS WITH
DISABILITIES ACT OF 1990; 2) THE UNRUH
CIVIL RIGHTS ACT; and 3) THE
CALIFORNIA DISABLED PERSONS ACT.**

[42 U.S.C. §§ 12101-12213; Cal. Civ. Code §§ 51,
52, 54, 54.1, 54.2 and 54.3.]

Comes now the Plaintiff, MERYL POMPONIO, (hereafter, "Mrs. Pomponio" or "Plaintiff")
through her Attorney, DANIEL MALAKAUSKAS, 7345 South Durango Drive, Suite B-107-240, Las
Vegas, NV 89113; Telephone: (866) 790-2242; Facsimile: (888) 802-2440; who, having been denied
her civil rights, hereby respectfully alleges, avers, and complains as follows:

THIS COURT CAN GRANT JUSTICE TO A DISABLED INDIVIDUAL

1. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is confined to using a mobility device to complete her day to day activities.

2. On three separate occasions in 2019, Mrs. Pomponio was denied the full and equal access to a public accommodation located at 2932 and 2940 North Main Street, Walnut Creek, CA 94597.

3. Mrs. Pomponio now asks that this Court stand up for her rights under the Americans with Disabilities Act ("ADA"), the Unruh Civil Rights Act ("UCRA") and the California Disabled Persons Act ("CDPA").

**THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,
OAKLAND DIVISION, HAS JURISDICTION AND IS THE PROPER VENUE FOR
PLAINTIFF TO SEEK JUSTICE**

4. The United States District Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) and (a)(4), for violations of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* This Court has supplemental jurisdiction over all state claims, including, but not limited to, claims under the Unruh Civil Rights Act, Cal. Civ. Code § 51, *et seq.*, and/or the California Disabled Persons Act, Cal. Civ. Code §§ 54-55.3, pursuant to 28 U.S.C. § 1367 as such acts not only expressly incorporate the Americans with Disabilities Act, but such state law claims also arose from the same nucleus of operative facts or transactions.

5. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) as the claims alleged herein arose in the Northern District, specifically at the real property located at 2932 and 2940 North Main Street, Walnut Creek, CA 94597.

1 6. The Oakland Division of the Northern District of California, is the proper division
2 because all claims herein arose at the real property located at 2932 and 2940 North Main Street, Walnut
3 Creek, CA 94597.
4

5 **THE VICTIM AND THOSE RESPONSIBLE**
6

7 7. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
8 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
9 confined to using a mobility device to complete her day to day activities. Mrs. Pomponio is therefore
10 a "person with a disability" and a "physically disabled person" and has a "disability" or "medical
11 condition" pursuant to the rules and regulations of the ADA, specifically 42 U.S.C § 12102 and Cal.
12 Civ. Code §§ 51 and 54.
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14 8. Defendant, BEVERAGES & MORE, INC., and Does 1-50 (hereafter, collectively or
15 individually, "Tenant I"), operate as a business establishment, hold themselves out to the public, and
16 do business as "Bevmo!" at 2940 North Main Street, Walnut Creek, CA 94597, and have substantial
17 control over the interior and exterior of the building, the parking lot, and all spaces adjacent to such
18 building.
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20 9. Defendant, JASON ZHONG WONG, as an individual and doing business as "China
21 Palace", JUDY LI CHAN WONG, as an individual and doing business as "China Palace", and Does
22 1-50 (hereafter, collectively or individually, "Tenant II"), operate as a business establishment, hold
23 themselves out to the public, and do business as "China Palace" at 2932 North Main Street, Walnut
24 Creek, CA 94597, and have substantial control over the interior and exterior of the building, the parking
25 lot, and all spaces adjacent to such building.
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27 10. Defendant, ADLAN, LLC, and Does 1-50 (hereafter, collectively or individually,
28 "Landlord", in their commercial real estate investment, owner, or landlord capacity), own, operate,

1 manage, and have substantial control over the real property, including the interior and exterior of the
2 building, parking lot and all spaces adjacent to the buildings located at 2932 and 2940 North Main
3 Street, Walnut Creek, CA 94597.

4
5 11. Defendants, Does 26-50, are individuals, businesses, organizations, or entities which
6 entered into a contract with Defendants, Tenant I, Tenant II, Landlord, and/or Does 1-50, as property
7 managers or franchisees for the real property and adjacent parking lot, and as such have substantial
8 control over the real property located at 2932 and 2940 North Main Street, Walnut Creek, CA 94597.

9
10 12. The true names and capacities of the Defendants named herein as Does 1-50, inclusive,
11 whether individual, corporate, partnership, association, or otherwise, are unknown to Plaintiff who
12 therefore sues these Defendants by such fictitious names. Plaintiff requests leave of court to amend this
13 complaint to allege their true names and capacities at such times as they are ascertained.

14
15 13. Plaintiff is informed and believes and thereon alleges that each of the Defendants,
16 including Does 1-50, caused and are responsible for the below described unlawful conduct and
17 resulting injuries by, among other things, personally participating in the unlawful conduct or acting
18 jointly or conspiring with others who did so; by authorizing, acquiescing in or setting in motion
19 policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent the
20 unlawful conduct; by failing and refusing with deliberate indifference to Plaintiff's rights to equal
21 access to public spaces; and by ratifying the unlawful conduct that occurred by agents, and officers or
22 entities under their direction and control.
23

24
25 **MS. POMPONIO WAS DENIED EQUAL ACCESS TO A
PUBLIC ACCOMMODATION AND NOW FIGHTS FOR ALL DISABLED**

26 14. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
27 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
28

1 confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a “person
2 with a disability” and a “disabled person” and has a “disability” or “medical condition” pursuant to
3 federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104.
4

5 15. On three separate occasions in 2019, Mrs. Pomponio desired to go to and use the
6 services, and/or buy products at “Bevmo!” and “China Palace” which are located at 2932 and 2940
7 North Main Street, Walnut Creek, CA 94597.

8 16. While in the parking lot adjacent to, surrounding, or while inside the business “Bevmo!”
9 and “China Palace”, Mrs. Pomponio personally encountered barriers that interfered with her ability to
10 use and enjoy the goods, services, privileges and accommodations offered by the facilities.
11 Specifically, while visiting the business establishment, Mrs. Pomponio had difficulty as the alleged
12 accessible parking stall had improper slopes making it more difficult for her to use her wheeled mobility
13 device. In addition, the restroom at “Bevmo” had a heavy door which made it difficult to open and
14 there was not enough clear floor space around the water closet which made it more difficult to access.
15 At “China Palace”, Mrs. Pomponio had difficulty as the restroom lavatory controls required twisting of
16 the wrist and the water closet’s flush controls were on the wrong side making them hard to reach and
17 operate.
18

19 17. Despite Mrs. Pomponio’ wish to patronize the businesses in the future, the above-
20 mentioned barriers constitute deterrents to access to the business, rendering the business’ goods,
21 services, facilities, privileges, advantages, and accommodations unavailable to physically disabled
22 patrons such as herself.
23

24 18. Mrs. Pomponio alleges, on information and belief, that Defendants knew that such
25 barriers existed and that Defendants’ failure to remove the barriers was intentional as the particular
26 barriers mentioned above were intuitive and obvious. Additionally, Defendants exercised control and
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1 dominion over the condition of the real property and building and had the financial resources to remove
 2 such barriers. Furthermore, Mrs. Pomponio alleges, on information and belief, that such modifications
 3 were readily achievable as removal of the above barriers could have been achieved without much
 4 difficulty or expense.
 5

6 19. Mrs. Pomponio brings this lawsuit to encourage Defendants to ensure their property is
 7 accessible to all.
 8

9 **FIRST CLAIM**
 10 **VIOLATION OF TITLE III OF THE ADA**
 11 **(As to all Defendants)**

12 20. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every
 13 allegation contained in all prior and subsequent paragraphs.

14 21. The parking lot and building at the real property known as 2932 and 2940 North Main
 15 Street, Walnut Creek, CA 94597 is owned, controlled, operated, leased, and managed by Defendants:
 16 Tenant I, Tenant II, Landlord, Does 1-50, or their agents. The businesses “Bevmo!” and “China Palace”
 17 including their parking lot, are open to the general public and as such are “public accommodations”
 18 under 42 U.S.C. § 12181 and 28 C.F.R. § 36.104.
 19

20 22. Pursuant to 42 U.S.C. § 12182(a), by owning, leasing, or operating the public
 21 accommodation known as “Bevmo!” and “China Palace”, Defendants are prohibited from
 22 discriminating against Plaintiff by denying her, on the basis of her disability, the full and equal
 23 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered by the
 24 facilities.
 25

26 23. In order to avoid discriminating against a disabled individual pursuant to 28 C.F.R. §
 27 36.101 and § 36.102, Defendants must ensure that such public accommodation is designed, constructed,
 28 and altered in compliance with the accessibility standards established by 28 C.F.R. § 36.101 *et seq.*,

1 and have proper policies, practices, and procedures to ensure that individuals with disabilities are
 2 afforded equal access to the full and equal enjoyment of the goods, services, facilities, privileges,
 3 advantages, or accommodations offered by the public accommodation. 42 U.S.C. §§ 12181(9),
 4 12182(b)(2)(A)(iv) and (v), 12183(a)(1) and (2).
 5

6 24. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
 7 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
 8 confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a "person
 9 with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to
 10 federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104. While at
 11 the interior, exterior, parking lot, or adjacent spaces, of the businesses known as "Bevmo!" and "China
 12 Palace", Plaintiff personally encountered a number of barriers that interfered with her ability, to use
 13 and enjoy the goods, services, privileges and accommodations offered at the facility.
 14

15 25. Specifically, Defendants failed to ensure that such real property was equally accessible
 16 to individuals with disabilities and medical conditions by having the following barriers at the real
 17 property:
 18

- 19 a. The alleged accessible parking spaces and access aisles' slopes exceed two percent
 20 (2%) in violation of 1991 ADAAG 4.6.3, 2010 ADAS 502.4 Exception, 2013 CBC
 21 11B-502.4 Exception and 2016 CBC 11B-502.4 Exception;
 22
- 23 b. One or more of the alleged accessible parking spaces fail to have "MINIMUM FINE
 24 \$250" identification signage in violation of 2013 CBC 11B-502.6.2, 2016 CBC 11B-
 25 502.6.2;
 26

- c. The required accessible parking space identification signage is not provided at one or more of the alleged accessible parking stalls in violation of 1991 ADAAG 4.6.4, 2010 ADAS 502.6, 2013 CBC 11B-502.6 and 2016 CBC 11B-502.6;
- d. One or more of the existing accessible parking space identification signage is less than sixty inches (60") above the finished ground surface in violation of 1991 ADAAG 4.6.4, 2010 ADAS 502.6, 2013 CBC 11B-502.6 and 2016 CBC 11B-502.6;
- e. One of more of the alleged accessible parking spaces' have a length that is less than eighteen feet (18') in violation of 2013 CBC 11B-502.2 and 2016 CBC 11B-502.2;
- f. The alleged accessible route's ground surface has one or more openings that exceeds one-half inch (1/2") in violation of 2010 ADAS 403.2, 2013 CBC 11B-403.2, and, 2016 CBC 11B-403.2;
- g. There are no accessible routes provided within the site from accessible parking spaces and accessible passenger loading zones, public streets and sidewalks, and public transportation stops to the accessible building or facility entrance they serve in violation of 1991 ADAAG 4.3.2(1), 2010 ADAS 206.2.1, 2013 CBC 11B-206.2.1 and 2016 CBC 11B-206.2.1;
- h. The cross slope of the accessible route from the public sidewalk exceeds two point-zero-eight percent (2.08%) in violation of 1991 ADAAG 4.3.7, 2010 ADAS 403.3, 2013 CBC 11B-403.3 and 2016 CBC 11B-403.3;
- i. (Bevmo) The door leading to the restrooms require more than five pounds (5 lbs.) of force to open in violation of 2013 CBC 11B-404.2.9 and 2016 CBC 11B-404.2.9;

- j. (Bevmo) The restroom door hardware requires tight grasping, pinching, or twisting of the wrist to operate in violation of 1991 ADAAG 4.13.9, 2010 ADAS 404.2.7, 2013 CBC 11B-404.2.7 and 2016 CBC 11B-404.2.7;
- k. (Bevmo) The floor clearance around the water closet was less than sixty inches by fifty-six inches (60" x 56") in violation of 1991 ADAAG 4.16.2, 2010 ADAS 604.3.1, 2013 CBC 11B-604.3.1 and 2016 CBC 11B-604.3.1;
- l. (China Palace) The hand operated flush control is not located on the open side of the water closet in violation of 1991 ADAAG 4.16.5, 2010 ADAS 604.6, 2013 CBC 11B-604.6 and 2016 CBC 11B604.6;
- m. (China Palace) The lavatory controls require grasping and twisting to operate in violation of CBC 11B-309.4 and ADA 309.4.

26. As a direct and proximate cause of Defendants' conduct, Plaintiff, on the basis of her disabilities, was denied the opportunity to participate in or benefit from a good, service, privilege, individuals in violation of 42 U.S.C. § 12181.

27. Plaintiff seeks injunctive relief to prohibit Defendants' acts and omissions as complained of herein which have the effect of wrongfully discriminating against Plaintiff and other members of the public who are physically disabled from full and equal access to these public facilities. Specifically, Plaintiff seeks injunctive relief ensuring that Defendants modify their real property to ensure that disabled persons are not discriminated against in receiving equal access to goods, services, and facilities as other more able-bodied persons.

SECOND CLAIM
VIOLATIONS OF CALIFORNIA CIVIL CODE § 51
(As to all Defendants)

1 28. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every
2 allegation contained in all prior and subsequent paragraphs.

3 29. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal.
4 Civ. Code § 51(f) and § 52(a), thus independently justifying an award of damages and injunctive relief
5 pursuant to California law.
6

7 30. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or
8 benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded
9 to other non-disabled individuals which resulted in Plaintiff's difficulty, discomfort, or embarrassment.
10 Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees,
11 costs, and damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation.
12

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14 **THIRD CLAIM**
15 **VIOLATIONS OF CALIFORNIA CIVIL CODE § 54**
16 **(As to all Defendants)**

17 31. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every
18 allegation contained in all prior and subsequent paragraphs.

19 32. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal.
20 Civ. Code § 54.1(d) and § 54.3(a), thus independently justifying an award of damages and injunctive
21 relief pursuant to California law.

22 33. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or
23 benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded
24 to other non-disabled individuals, which resulted in Plaintiff's difficulty, discomfort or embarrassment.
25 Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees,
26 costs, and damages on no less than one-thousand U.S. dollars (1,000 USD) for each and every violation.
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PRAYER

WHEREFORE, Plaintiff prays the following:

1. For injunctive relief directing Defendants to modify their facilities and policies as required by law to comply with ADA regulations, including the ADAAG where required; institute policy to enable Plaintiff to use goods and services offered to the non-disabled public; provide adequate access to all citizens, including persons with disabilities; issue a permanent injunction directing Defendants to maintain their facilities usable by Plaintiff and similarly situated person with disabilities in compliance with federal regulations, and which provide full and equal access, as required by law;

2. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur and will not recur;

3. Award Plaintiff all appropriate damages, including, but not limited to, either statutory damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation of Cal. Civ. Code § 51, or no less than one-thousand U.S. dollars (1,000 USD) for each and every violation of Cal. Civ. Code § 54, with either Cal. Civ. Code § 51 or § 54 being elected prior to, or at, trial, but not both, and general damages in an amount within the jurisdiction of the Court, according to proof;

4. Award Plaintiff all litigation expenses and costs of this proceeding, and all reasonable attorneys' fees as provided by law, including but not limited to, 42 U.S.C. § 12205, Cal. Civ. Code §§ 52 and 54.3; and

5. Grant such other and further relief as this Court may deem just and proper.

Dated: December 30th, 2020

/s/ Daniel Malakauskas

By: DANIEL MALAKAUSKAS

Attorney for PLAINTIFF,
MERYL POMPONIO

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